

Richard Franzetti, P.E.
Town Engineer



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Office of the Town Engineer
60 McAlpin Avenue
Mahopac, New York 10541

Notification of Violation and Order to Cease and Desist

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

VIA EMAIL TO MICHAEL BARILE

October 24, 2019

Mr. Michael Barile and Mr. Tommy Boniello
888 Route 6
Mahopac, NY 10541

Re: Notice of Violation and Cease and Desist
825 South Lake Blvd TM 75.43-1-22

Dear Mr. Barile and Mr. Boniello:

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This Notification of Violation ("NOV") and Order to Cease and Desist are issued pursuant to §§ 120.8, 120.82 and 120-86 of the Town of Carmel Code, ("Sewer Use Law"), and NY CLS Town §§135 and 198, which authorize actions to enforce the Sewer Use Law. As described below, I have determined that real property owned by Michael A. Barile and Tommy A. Boniello (hereinafter, "You") located at 825 South Lake Boulevard, Mahopac, New York (hereinafter, your "Property") is located outside of the Carmel Sewer District Number 1 (hereinafter "CSD #1"). I have further determined that from at least September 4, 2019, and continuing to the present, you have connected your Property to CSD #1 without proper authorization and in violation of the Sewer Use Law. I hereby notify you of the violations set forth herein of the Sewer Use Law and order you immediately to cease and desist the connection to the Carmel sewer main unless and until you meet the conditions set forth herein.

Pursuant to §120.8 of the Sewer Use Law, you are required to provide a statement with respect to the violations alleged herein and describe your efforts to comply no later than ten (10) calendar days after your receipt and to provide a progress report no later than each 30 calendar days thereafter describing the actions taken to comply with this NOV and Order to Cease and Desist. The process set forth herein is intended to timely cure the ongoing violations and ensure that all approvals are obtained as required by the Sewer Use Law and the longstanding Agreements between the Town of Carmel and New York City governing the acceptance and treatment of sanitary sewage from the Town of Carmel by New York City.

Authority

Pursuant to §120-82 of the Sewer Use Law, whenever the Superintendent finds that a person has violated or is violating Chapter 120, or any wastewater discharge permit, order prohibition, limitation, or requirement permitted by Chapter 120, the Superintendent may serve upon such person written notice stating the nature of the violation.

Pursuant to §120-86A of the Sewer Use Law, whenever the Superintendent finds that a user has violated or continues to violate this chapter or any permit or administrative order issued hereunder, the Superintendent may issue an order to cease and desist such violations and direct those persons in noncompliance to (1) comply forthwith;

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and (2) take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations or terminating the discharge.

Pursuant to §120-5 of the Sewer Use Law, "user" is defined as any person who contributes, causes, or permits the contribution of wastewater into the POTW.

Pursuant to §120-5 of the Sewer Use Law, "Superintendent" is defined as the Town Engineer, who shall be licensed to practice engineering in the state, and otherwise qualified to oversee water treatment and distribution and POTW operations, as well as his authorized deputy, agent or representative.

Pursuant to §120-5 of the Sewer Use Law, "Publicly Owned Treatment Works" or "POTW" is defined as treatment works, which is owned by the Town of Carmel Sewer District or the City of New York. This definition includes any sewers and appurtenances that transport wastewater to the POTW treatment plant.

Pursuant to §120-91, the Superintendent has the right in his sole discretion to utilize one or more appropriate administrative remedies.

Pursuant to Town Law §135, the violation of the Sewer Use Law also is declared to be a misdemeanor punishable by civil penalty or fine or imprisonment or both, by action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation.

Findings of Fact and Conclusions

1. I, Richard Franzetti, am currently am the Town Engineer and Superintendent of the Town of Carmel's POTW system and have held that position since November 2013. I am licensed to practice engineering in New York State, and otherwise qualified to oversee water treatment and distribution and POTW operations.
2. On November 8, 1991, the Town of Carmel entered an "Agreement for Sewer Service Between Carmel Carmel Sewer District #1 and Michael A. Barile and Tommy A. Boniello," which was executed by and agreed to by Michael Barile and Tommy Boniello and approved by the Town Board, which permitted Michael Barile and Tommy Boniello to connect the Property to CSD #1 only if they met certain conditions in advance of making such connection (hereinafter "1991 Conditional Approval").
3. Among other things, the 1991 Conditional Approval states that "Michael A. Barile and Tommy A. Boniello agrees [sic] to obtain all necessary permits and approvals from the New York State DOT, DEC and New York City DEP for the aforesaid connection to the Carmel Sewer District # 1 at their own cost and expense."
4. Among other things, the 1991 Conditional Approval requires that "Until proper permits are received by DEC and N.Y.C. DEP the main will remain dry."
5. On May 20, 1992, New York City Department of Environmental Protection transmitted correspondence from George Mekenian, P.E., Chief Sources Division, NYCDEP to John Karell, Jr., P.E., Public Health Director, Division of Environmental Health Services, Putnam County of Health, in which the NYCDEP elected not to approve the connecting line, stating:

Sewer service in this area would require an expansion of the sewer district. Such plans are not part of the facility plan for the new Mahopac Wastewater Treatment Plant being designed under Order on Consent.

The proposed new facility has been sized to treat existing sewer district flow. The design flow includes a significant contribution from the presently excessive inflow and infiltration (I&I). This condition must be corrected before the City could entertain the expansion of the sewer district. In addition, a proposal for an expansion of the sewer district would require a study by the Town of

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Carmel to determine the adequacy of existing treatment and the specific areas to be served by the sewer district.

6. On February 3, 1993, John Karell, Jr., P.E., Public Health Director sent a letter to Michael Barile and Tom Boniello regarding "Approval of Plans for Low Pressure Sewer Force Main for Mahopac Beach (T) Carmel" which determined that the Connection Line plans meets the "applicable criteria of the NYS Department of Environmental Conservation and the Putnam County Health Department" and that "... the applicant accepts and agrees to abide by and confirm" twelve requirements including, but not limited to, "THAT the facilities receive approval from the New York City Department of Environmental Protection prior to operation of the sewage pumping station."
7. On September 23, 1994, Carl Picha, P.E., East of Hudson District Engineer sent a letter to Vincent L. Soukup, P.E., Carmel Town Engineer, regarding "Lakeside Restaurant, Carmel SD #1, Mahopac, (T) Carmel," finding that the Connecting Line constitutes an illegal connection and constitutes a violation of a number of provisions of the 1938 Agreement between the Town of Carmel and New York City. Carl Picha stated in that letter, "Accordingly, the Town must take whatever actions are appropriate to assure that the aforementioned 4" PVC line is not placed into service. Please indicate in writing within sixty days of this letter the actions the Town intends to take to preclude the use of this illegal connection."
8. On October 27, 1994, John Karell, Jr., P.E., Carmel Town Engineer, sent correspondence to Carl Picha, P.E., NYCDEP "Re: Sewer Connection Lakeside Restaurant (Mahopac Beach) Carmel Sewer District #1 Carmel (T)" which states, "Obviously, approval from all appropriate agencies must be obtained prior to use of the force main." Furthermore, in this letter Mr. Karell states that [t]he force main discharge line is capped in the manhole on Route 6N." Furthermore, in this letter, Mr. Karell states to NYCDEP, "You should be aware that, periodically, Town staff inspect this manhole to assure that the force main is not in use." Finally, in this letter, Mr. Karell states "Based on the above, the Town is prepared to accept sewage from this private service connection upon completion of the reconstruction of the Mahopac STP and upon receipt of all necessary approvals from other agencies, including NYCDEP." [emphasis added].
9. On April 7, 2015, the NYSDEC issued a Notice of Violation to the Town of Carmel alleging that excessive flows from the CSD #1 caused a bypass of the NYCDEP Mahopac Wastewater Treatment Facility in violation of NYS Environmental Conservation Law, Article 17.
10. On May 1, 2015, Paul V. Rush, P.E., Deputy Commissioner, Bureau of Water Supply, NYCDEP issued a Notice of Violation to the Town of Carmel alleging chronic problems in CSD #1, including inflow and infiltration, deteriorating manholes, and massive grease accumulation. The NOV also alleged an April 21, 2015 sewer spill from a manhole in CSD #1 impacted Lake Mahopac. The Town took corrective action to address the concerns of the NYCDEP's NOV.
11. On May 29, 2019, Tommy A. Boniello and Michael A. Barile sent correspondence to the Town of Carmel Engineering Department requesting the "activation of the dry sewer line connecting 825 South Lake Boulevard to Carmel Sewer District # 1."
12. NYCDEP owns and operates the Mahopac Wastewater Treatment Facility which receives and treats the sewer flow from CSD #1 under an agreement dated September 9, 1938 (hereinafter, "1938 Agreement").
13. The Mahopac Wastewater Treatment Facility is a POTW as defined herein.
14. NYCDEP inspected the Connecting Line on September 4, 2019 and determined that it was uncapped and connected to CSD #1 located at the intersection of Clark and Route 6N and provided me written and photographic evidence to that effect.

NYSCEF DOC. NO. 11

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15. Since September 4, 2019, Michael Barile has publicly stated on numerous occasions that the sewer line remains in use and, to the best of my knowledge, the line has not been capped at this time and remains connected to the CSD #1 sewer main.
16. As the result of the proposed connection as set forth in the 1991 Conditional Approval and the actual connection which occurred at on and after September 4, 2019, you constitute a user of a POTW as defined in §120-5 of the Sewer Use Law.
17. On September 19, 2019, Paul V. Rush, P.E., Deputy Commissioner, Bureau of Water Supply, NYCDEP sent correspondence to Kenneth Schmitt, Supervisor, Town of Carmel, stating that the Property's unauthorized, out-of-district connection is a clear violation of the Town of Carmel's Sewer Use Law and that the connection constitutes a violation of the 1938 Agreement between the City of New York and the Town of Carmel, which outlined which properties could connect to the sewer system and under what circumstances they could connect.
18. The unauthorized connection of the Property from September 4, 2019 to CSD #1 via connecting line constitutes a violation of the 1991 Conditional Authorization.
19. The unauthorized connection of the Property from September 4, 2019 to CSD #1 constitutes a violation of the §120-14 of the Code of Carmel which states that the use of the Town public sewers shall be strictly limited and restricted, except as provided in §120-13, to receive and accept the discharge of sewage and other waste, including industrial wastes generated on or discharged from real property within the bounds of the service area of any POTW.
20. The unauthorized connection of the Property from September 4, 2019 to CSD #1 constitutes a violation of §120-15 of the Sewer Use Law which states that the Town Board, on the recommendation of the Superintendent, shall have the authority to enter into agreements allowing the acceptance of sewage and other waste, including industrial wastes, generated or discharged from persons outside the service area of a POTW, *but any such agreement involving the Mahopac Wastewater Treatment plant are not valid without prior written approval from the NYCDEP.* [emphasis added].
21. The unauthorized connection of the Property to CSD #1 constitutes a continuing violation of the 1991 Conditional Authorization and the Code of Carmel.
22. On the date of execution of this NOV/Cease and Desist, I transmitted a letter to NYCDEP requesting that NYCDEP consider for potential approval an Out of District (hereinafter, "OOD Request") connection for the Property which is attached as Attachment 1.
23. As the result of the foregoing, I hereby issue an Notification of Violation pursuant to §120-82 of the Sewer Use Law with respect to the unauthorized out of district connection of the Connecting Line from the Property to Sewer District # 1 for ultimate treatment at the Mahopac Wastewater treatment facility.
24. As the result of the foregoing, I issue a Cease and Desist Order directing you immediately to cease discharge to CSD #1 and revert to the use of the septic system at the Property unless you undertake the following:
 - a. You must obtain and provide for Town of Carmel review all approvals required by the 1991 Conditional Approval, including, but not limited to express written approval of the out-of-district connection of the Property to Sewer District # 1 from NYCDEP. You expressly may rely on past documents to the extent that they demonstrate compliance with the terms of the 1991 Conditional

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Approval and a licensed professional engineer indicates in writing that conditions have not materially changed since the time such documents were created.

- b. You must cooperate with NYCDEP as it relates to the OOD Request including, but not limited to:
- i. Timely provide NYCDEP all information that it requests in connection with the OOD Request;
 - ii. Conduct any testing or other evaluation required by NYCDEP in connection with the OOD Request. In the event any such testing or other evaluation is required by NYCDEP, you shall provide advanced written notice to the Town so that the Town may elect to observe any such activities;
 - iii. Comply with all NYCDEP requests for access to the Property for the purposes of conducting, observing, or overseeing any inspection or investigatory activities that it deems necessary to consider and timely process the OOD Application;
 - iv. Upon request by NYCDEP, timely enter a written agreement providing for the payment of NYCDEP sewer use fees on and after any approval of the Connecting Line at NYCDEP's subject to terms and conditions approved by NYCDEP;
 - v. Upon request by NYCDEP, timely enter a written agreement with providing for the payment of any NYCDEP back sewer use fees for the pre-approval use of the NYCDEP WWTF subject to terms and conditions approved by NYCDEP.
- c. Provide a progress report no later than 30 days after submission of the initial 10 day plan to the Town Engineer with a copy to NYCDEP and Putnam County and then every 30 days thereafter, describing actions taken during the prior reporting period to comply with the Sewer Use Law and this NOV and Cease and Desist Letter, as well as the activities planned for the next 30 calendar day period.
25. Pursuant to §120-86A of the Sewer Use Law, you shall immediately cease and desist use of the connecting line in the event that you do not submit an adequate 10 day plan as required by §120-82 of the Sewer Use Law, you do not provide adequate progress reports every 30 days after submission of the 10-day plan, you do not make material progress toward meeting all conditions set forth in the 1991 Conditional Approval and, you receive notification from NYCDEP indicating that the Mahopac Wastewater Treatment Facility does not have adequate capacity to receive any additional sewage as the result of the interim use of the connecting line, or upon written notice from the Town of Carmel requiring that you immediately stop use of the connecting line which, as a discretionary act, is in the Town of Carmel's sole discretion. In the event that there is delay in processing of any approval that is not caused by you but your application remains in good standing, it shall not be deemed to be a breach requirement to make material progress. In the event that you are required to so cease and desist pursuant to this Paragraph 25, you shall timely:
- a. Arrange with the Town in order to have the Town cap the connecting line at the location of the manhole at the intersection of Clark and 6N and provide the Town with a sworn written statement every 90 days thereafter that the Connecting Line remains capped.
 - b. Disable the forced main pump by disabling the electrical supply and provide written proof from a certified engineer and photographic evidence of such action unless such pump is utilized in connection with the Septic System, in which case it may be utilized for that express purpose as so attested to by a certified engineer.

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- c. Notify NYCDEP and the Putnam County Department of Health that the septic system is being returned to service to allow NYSDEP to conduct a dye test of such septic system located at the Property in its discretion. In the event that any such dye test demonstrates any adverse impact on Lake Mahopac, immediately notify the Town of Carmel.

With respect to the NOV issued pursuant to §120-82 of the Sewer Use Law, you are required pursuant to that section to provide, within 10 calendar days of the date upon which the Superintendent mails this notice, to provide the Town of Carmel with an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall be submitted to the Superintendent. You are required to incorporate the requirements set forth in Paragraph 25 and, if necessary, Paragraph 26 above into that plan. Furthermore, you are hereby ordered to pursuant to §120-86A of the Sewer Use Law to take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation which shall include providing a progress report no later than 30 days after submission of the initial 10 day plan to the Town Engineer with a copy to NYCDEP and Putnam County and then additional progress reports every 30 days thereafter, describing actions taken during the prior reporting period to comply with the Sewer Use Law and to take all actions set forth in this NOV and Cease and Desist Letter, as well as all such activities planned for the next 30 calendar day period.

The Town of Carmel reserves its rights to amend this NOV and Cease and Desist Letter, and to take any additional action and exercise any other right it may have with respect to this matter, including the right to seek any penalties for past and ongoing violations. Compliance with the requirements set forth herein in no way relieves you of liability for any violations of law before or after receipt of this NOV and Cease and Desist Letter.

If you have questions or concerns, please contact me.

Sincerely,



Richard J. Franzetti, P.E.
Town Engineer

cc:

Paul V. Rush, P.E., NYCDEP at PRush@dep.nyc.gov
David Warne, NYCDEP at DWarne@dep.nyc.gov
Lorraine Holdridge, NYSDEC at lorraine.holdridge@dec.ny.gov
Joseph Paravati, PCDOH at Joseph.Paravati@putnamcountyny.gov
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